

1 WRIGHT, FINLAY & ZAK, LLP  
2 Dana Jonathon Nitz, Esq.  
3 Nevada Bar No. 0050  
4 Natalie C. Lehman, Esq.  
5 Nevada Bar No. 12995  
6 7785 W. Sahara Avenue, Suite 200  
7 Las Vegas, NV 89117  
8 (702) 475-7964; Fax: (702) 946-1345  
9 [dnitz@wrightlegal.net](mailto:dnitz@wrightlegal.net)  
10 [nlehman@wrightlegal.net](mailto:nlehman@wrightlegal.net)

11 *Attorneys for Defendants, U.S. Bank, National Association, Western Progressive-Nevada, Inc.,*  
12 *and Ocwen Loan Servicing, LLC*

13  
14 **UNITED STATES DISTRICT COURT**  
15 **DISTRICT OF NEVADA**

16 ALFRED CLARK,

17 Plaintiff,

18 vs.

19 NEW CENTURY MORTGAGE COMPANY,  
20 US BANK, NATIONAL ASSOCIATION,  
21 BARCLAYS CAPITAL REAL ESTATE INC.,  
22 dba HOMEQ SERVICING, ATTORNEY IN  
23 FACT; WESTERN PROGRESSIVE –  
24 NEVADA, INC.; OCWEN LOAN  
25 SERVICING, LLC,

26 Defendants.

Case No.: 2:17-cv-01065-JAD-VCF

**DEFENDANTS' MOTION TO STAY  
DISCOVERY**

27 COMES NOW Defendants, U.S. Bank, National Association, Western Progressive-  
28 Nevada, Inc., and Ocwen Loan Servicing, LLC, and through their attorneys of record, Dana  
Jonathon Nitz, Esq., and Natalie C. Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP,  
and hereby moves pursuant to Fed. R.Civ. P. 26 (c) for a protective order staying discovery  
pending a ruling on its Motion to Dismiss [ECF No. 25].

///

///

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff Alfred Clark initiated this matter by filing a Complaint on April 17, 2017 [ECF No. 1], asserting that his property was wrongfully foreclosed upon. The 249-page pleading identifies defendants New Century Mortgage Company (“New Century”), U.S. Bank, Barclays Capital Real Estate, Inc. dba HomEq Servicing, Attorney in Fact (“Barclays”), Western Progressive, and Ocwen in connection with a Note and Deed of Trust. Clark’s Complaint lists a few causes of action in its caption – some general, some specific – then engages in conclusory allegations that specify neither which Defendant(s) acted, nor which particular violations occurred. Attached to the Complaint are voluminous exhibits that do little to clarify his claims.

Clark’s main contention appears to be an allegation that the assignment of the Deed of Trust from New Century to U.S. Bank was invalid due to New Century’s bankruptcy proceeding filed in 2007. *See* Complaint, p. 5, ¶¶ [sic] 5-6. Clark claims that, based on this supposed “invalid” assignment, the ongoing efforts to foreclose upon the subject property are without authority and are therefore invalid. Clark extends this allegation, then, to contend that all Defendants have been acting in concert to deprive him of his rightful property. In essence, Clark failed to fulfill his obligations as mortgagor and now seeks to pass the consequences of his failure on to the loan servicer and lender. This is nothing more than an attempt by Clark to keep his home without having to satisfy his duties under the Note and Deed of Trust. **None of Clark’s claims can be maintained against U.S. Bank, Western Progressive or Ocwen.**

Defendants moved for dismissal on the following grounds: *First, Clark lacks standing to challenge the Assignment, and even if he did have standing, there is no legal basis to do so. Second, Clark’s remaining claims fail because they are either time-barred or fail to meet the pleading requirements.* *Second*, Clark’s remaining claims are either time-barred or fail to meet pleading requirements. *Finally*, Clark failed to make any viable claims for relief and no amendment to the complaint would lend any viability to the claims asserted.

Clark’s Opposition failed to refute any of the Defendants’ arguments contained in the Motion to Dismiss. Despite Defendants’ claims that Clark’s Complaint lacked specificity and

clarification, Clark failed to supplement his pleadings with any factual bases for his claims. Clark failed to clarify any of his claims with the proper elements and/or tests, and did not specify or qualify any of his claims. Clark instead used his Opposition as a platform to reiterate his Complaint, and even “double down” on facts that are contrary to the record in this case. Clark seeks to have Defendants and this Court employ guesswork to evaluate his claims for relief, and leaves the reasoning and legal analysis to others. Because Clark failed to meet his burden in bringing these claims, and because Clark failed to refute the arguments by Defendants, Clark’s Complaint should be dismissed in its entirety, with prejudice.

**Accordingly, because Plaintiff has failed to adequately plead his claims and his claims are baseless, a stay of discovery is justified.**

## **II. ARGUMENT**

District courts have broad discretion to stay discovery. The Supreme Court has recognized that discovery should not be permitted until a plaintiff has stated a viable cause of action. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (“Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.”) And the Ninth Circuit has found that, when faced with a motion to dismiss, the “sounder practice [is] to determine whether there is any reasonable likelihood that plaintiffs can construct a claim before forcing the parties to undergo the expense of discovery.” *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9<sup>th</sup> Cir. 1987). The Rutman court also stated that the “purpose of Fed. R. Civ. P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery.” *Id.*

Staying discovery in this action is appropriate given the high probability that Defendants will prevail on the Motion to Dismiss. See *Clemons v. Hayes*, No. 10-011, 2011 WL 2112006, at \*4 (D. Nev. May 26, 2011) (granting motion to stay discovery where it appeared “unlikely” that the plaintiff’s claim would survive a motion to dismiss); *Buckwater v. Nev. Bd. Of Med. Exam’rs*, No. 2:10-cv-02034-KJD-GWF, 2011 WL 841391, at \*3 (D. Nev. Mar. 7, 2011) (finding that “it appears probable” that the defendant’s motion to dismiss would be granted and

1 therefore staying discovery). As detailed in Defendants' Motion to Dismiss, Plaintiff's claims are  
2 deficient both because they fail to state a claim upon which relief can be granted and they fail  
3 under the basic pleading standard of Fed. R. Civ. P. 8. Engaging in discovery on a factually  
4 deficient complaint would unnecessarily burden the Defendants.

5 **III. CONCLUSION**

6 The Court should grant Defendants' Motion to Stay Discovery and issue a protective  
7 order staying discovery until such time as the Court has rendered a decision on Defendants'  
8 Motion to Dismiss (ECF No. 25).

9 DATED this 29<sup>th</sup> day of August, 2017.

10 Respectfully submitted,

11 WRIGHT, FINLAY & ZAK, LLP

12  
13 /s/ Natalie C. Lehman, Esq.

14 Dana Jonathon Nitz, Esq.

15 Nevada Bar No. 0050

16 Natalie C. Lehman, Esq.

17 Nevada Bar No. 12995

18 7785 W. Sahara Avenue, Suite 200

19 Las Vegas, NV 89117

20 *Attorneys for U.S. Bank, National Association,*

21 *Western Progressive-Nevada, Inc., and Ocwen*

22 *Loan Servicing, LLC*  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP and that I electronically served on the 29<sup>th</sup> day of August, 2017, the foregoing **MOTION TO STAY DISCOVERY** to all parties and counsel as identified on the Court-generated Notice of Electronic Filing and by United States first class mail, postage paid to the persons below:

Alfred Clark  
5613 Harmony Avenue  
Las Vegas, Nevada 89107  
*Pro Se Plaintiff*

/s/ Lisa Cox  
An Employee of WRIGHT, FINLAY & ZAK, LLP